

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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JACK BROWN,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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## APPELLANT'S REPLY BRIEF.

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TOBIAS G. KLINGER,

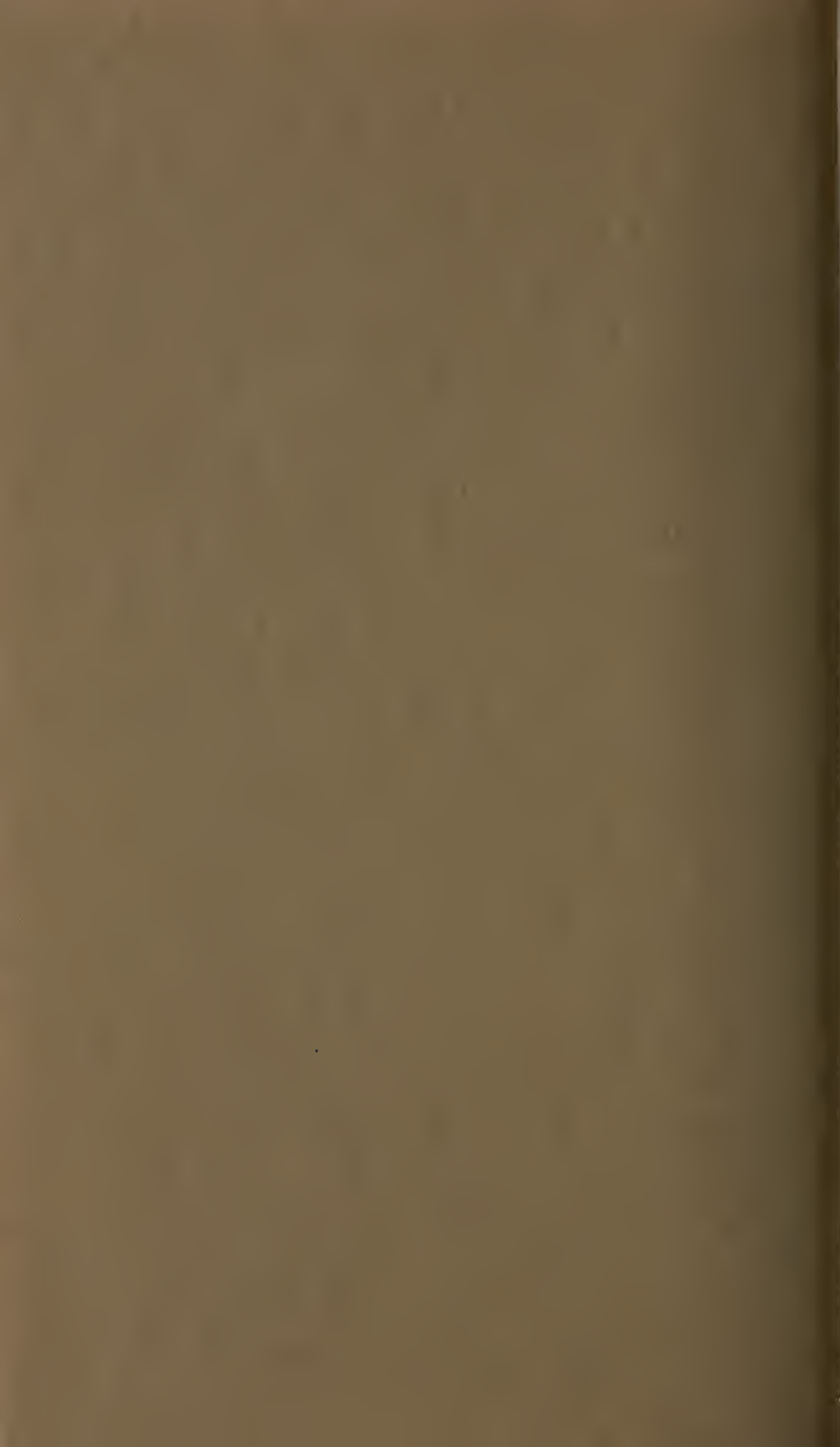
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No. 14885

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Appellee's brief places certain distorted interpretations upon some of the facts of this case that were neither suggested nor raised at the hearing, and then draws totally unwarranted inferences from such misinterpretations. Appellant therefore takes this opportunity to correct such distortions.

### 1. Insurance.

Appellee states as a fact that Appellant *himself* paid \$620.00 per year in life insurance premiums and interest on life insurance loans during all five years of the probationary period (Appellee's Br. pp. 8-9 and 13). Actually, the facts brought out on Appellee's own cross-examination of Appellant show that Appellant's whole family made the payments and that Appellant was living

on his relatives' charity. Appellant testified [Tr. August 22, 1955, p. 57, lines 6-21]:

“Q. Since 1952 has there been any sum paid on these insurance policies in excess of \$620 a year? A. The only amount that was paid on the insurance policies what was really necessary to keep the policies alive.

Q. And who has paid that sum? A. Well, when I didn't have enough I borrowed some from my children to do it. Mrs. Brown saw to it that the amounts were available when they were due in order not to lose the entire insurance, because at my age I couldn't go out and get any other insurance.

Q. In other words, Mrs. Brown made the payments? A. Well, yes, with my help—we tried to help each other to stay afloat.

Q. Have you repaid any sums to the individuals who helped make the payments? A. Not that I know of.”

## 2. Living Expenses.

Appellee further makes the unwarranted charge that in 1954, Appellant, with his wife, had an additional \$6,170.83 of income, basing this charge on two unrelated matters in the Buntin affidavit [App. Ex. B]. Because this affidavit states that the Browns charged personal living expenses to Mrs. Brown's drawing account, Appellee states that the \$6,170.83 of “Other Expenses” in the condensed statement of Profit and Loss of National Furniture Company must be all living personal expenses (Appellee's Br. pp. 10-11).

No such attack was made by Appellee at the hearing, nor was a single question asked concerning it. Nor did the Court refer to it at any time, either during the hearing or at its conclusion. Appellant thus had no occasion

to meet this extraordinary charge by pointing out exactly what business expenses—such as utilities, insurance, legal and accounting, office supplies, freight and shipping, telephone, repairs, and other similar and customary items not covered elsewhere in the affidavit—made up this item. But that this \$6,170.83 contains no personal living expenses is made clear by a further statement in the Buntin affidavit which Appellee wholly overlooks. [App. Ex. B, last paragraph on p. 1]:

“THAT in the year 1954 there was only a net profit of One Thousand Two Hundred Twenty-three Dollars and Sixty-one Cents (\$1,223.61) from the operations of the National Furniture Company, which together with a salary of Fifty Dollars (\$50.00) per week of Jack Brown, gave an adjusted gross income subject to United States Federal Taxes of Three Thousand Eight Hundred Twenty-three Dollars and Sixty-one Cents (\$3,823.61)”;

*This \$3,823.61 of gross income subject to Federal Income Taxes is arrived at after deducting the \$6,170.83 of “Other Expenses” from the total gross income. It can be judicially noted that personal living expenses cannot be deducted in computing gross income for Federal Tax purposes.*

### 3. Salary.

Appellee also complains because Appellee’s interpretation of the evidence indicates that a delivery boy was paid more salary in 1954 than Appellant (Appellee’s Br. p. 10). Again, no such attack was made at the hearing so Appellant had no chance to explain the item further. The difficulty here is that Appellee and the Court below cannot seem to understand, despite all the evidence so establishing, that Appellant and his wife have been barely eking out a marginal existence helped only by the charity of

their children. The fact of a delivery boy earning more than Appellant is quite in accord with the conditions under which Appellant was actually living, and is "incongruous" (as Appellant describes it) only to one holding a completely unsubstantiated belief in Appellant's hidden fortune.

#### 4. Conclusion.

Appellee's arguments above emphasize again the contrast between Appellant's actual straitened circumstances and Appellee's unfounded belief in Mr. Brown's imagined hidden wealth. In reply to those portions of Appellant's Brief pointing out the Court's reliance below on Appellant's supposed hidden wealth, and the complete lack of any evidence whatsoever, despite searches made for it, to support such belief, Appellee offers no facts, but only the statement (Appellee's Br. p. 18).

"The United States Attorney does not agree as suggested, that Appellant has no assets hidden away . . . ."

Therefore, Appellant again urges that the facts and arguments outlined in Appellant's opening brief establish that there is no substantial evidence to support the findings of the Court on which the revocation of probation is based, and that the revocation was an abuse of the Court's discretion.

Appellant therefore prays that this Court set aside the order of the Court below revoking and terminating Appellant's probation, and vacate and set aside the sentence imposed.

Respectfully submitted,

TOBIAS G. KLINGER,

*Attorney for Appellant.*